HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.13775 OF 2007

Between:

Miss. Pushpalatha

…Petitioner

AND

The Commissioner,
Greater Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad and four others

...Respondents

: O R D E R :

Counsel for the petitioner : Shri T. Lakshmi Narayana

June 29, 2007

Per G.S. Singhvi, CJ

An inter-se dispute between the petitioner and respondent No.4, who own flats in the colony built by Andhra Pradesh Housing Board (for short, 'the Board') at Bagh Lingampally, Hyderabad is

sought to be settled by the petitioner by invoking public law remedy in the form of this petition filed under Article 226 of the Constitution of India, but after hearing Shri T. Lakshmi Narayana and perusing the record, we are convinced that there is no warrant for entertaining her prayer to issue a mandamus to respondent Nos.1 and 2 to demolish the alleged unauthorised construction raised by respondent No.4 in Flat Nos.3 and 4 of Block No.21.

The genesis of the dispute between the petitioner and respondent No.4 is not new. As early as in 2003, respondent No.4 filed suit for mandatory and perpetual injunction in the Court of X Junior Civil Judge, City Civil Court, Hyderabad, which stands registered as O.S.No.6716 of 2003. The petitioner is one of the defendants in the suit. The petitioner has not placed on record copy of the plaint and order, if any, passed by the learned trial Court in the suit filed by respondent No.4. This has left us to grope in dark about the pleadings of the parties to the suit and the nature of relief claimed by respondent No.4.

In the affidavit filed by her, the petitioner has relied on report (dated: nil) Annexure P.5 submitted by the Advocate Commissioner in I.A.No.556 of 2005 (O.S.No.6716 of 2003) to show that respondent No.4 has raised construction in violation of the sanctioned plan and averred that despite representations dated 8.5.2007 made to the Commissioner, Chief City Planner and Assistant City Planner, Circle III, Greater Hyderabad Municipal Corporation, no action has been taken for demolition of the unauthorised construction.

Shri T. Lakshmi Narayana argued that notwithstanding the pendency of the suit for injunction filed by respondent No.4, this Court should entertain the writ petition and issue a mandamus to respondent Nos.1 and 2 to demolish the disputed construction because the same has been raised in total violation of the sanctioned

plan. Learned counsel emphasised that on account of the illegal construction, the petitioner has been deprived of her right to enjoy the property with all its incidents and this constitutes violation of her fundamental right to equality and life guaranteed under Articles 14 and 21 of the Constitution.

In our opinion, the writ petition is liable to be dismissed for more than one reasons, which are enumerated hereunder:

1) Although the petitioner has made mention of O.S.No.6713 of 2003 filed by respondent No.4 and annexed copy of the Advocate Commissioner's report, she has deliberately omitted to place on record copy of the plaint filed by respondent No.4. Thus, she is guilty of not approaching the Court with clean hands.

2) Learned counsel for the petitioner has not been able to show us as to why his client did not seek intervention of the trial court to restrain respondent No.4 from undertaking construction in the guise of pendency of the suit for injunction.

3) The question whether the construction raised by respondent No.4 is contrary to the sanctioned plan or any statutory provision can be decided only after considering the evidence, which may be produced by the parties. This exercise can more appropriately be done by the civil court and no convincing reason has been put forward by the petitioner as to why she has not availed the alternative remedy of civil suit which, in the facts of this case, must be treated as more effective. Even otherwise, we are convinced that there is no extra-ordinary reason for making a departure from the settled law that the High Court will not entertain writ petition under Article 226 of the Constitution of India if an effective alternative remedy is available to the petitioner.

In the result, the writ petition is dismissed leaving the petitioner free to avail remedy by filing civil suit.

As a sequel to dismissal of the writ petition, WPMP No.17281 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S. SINGHVI, CJ

June 29, 2007

C.V. NAGARJUNA REDDY, J

svs